



SUPREME COURT OF THE UNITED STATES OF AMERICA

Case No.

MOTION TO DISMISS OR TO AFFIRM
Appeal from the Supreme Court of Colorado (82SAJ52)
District Court County of Montrose (81CR63)

RICHARD VELASQUEZ,

Appellant,

v.

STATE OF COLORADO,

Appellee.

The State of Colorado requests this court to either dismiss appellant's appeal, or to affirm the ruling of the Colorado Supreme Court, because:

1. Appellant lacks sufficient standing to challenge the constitutionality of the statute: The charges against him were dismissed and, under Colorado's double jeopardy clause, they may not be reinstated.
2. Of the two arguments appellant advances before this court, only one, i.e. that concerning the equal protection-due process concern, was briefed before, and considered by, the Colorado Supreme Court. Relief under this claim is barred by this court's decision in United States v. Batchelder, 442 U.S. 114 (1979).
3. That claim which was not presented to the Colorado court, i.e. that concerning preemption of the field by congressional action, does not raise a substantial federal question. 21 U.S.C. 903 provides:

No provision in this subchapter shall be construed as indicating an intent on the part of the Congress to occupy the field in which that provision operates, including criminal penalties, to the exclusion of any State law on the same subject matter which would otherwise be within the authority of the State, unless there is a positive conflict between that provision of this subchapter and that State law so that the two cannot consistently stand together.

See, e.g., Ledcke v. State, 260 Ind. 382, 296 N.E. 2d 412 (1973).

FOR THE ATTORNEY GENERAL:

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CERTIFICATE OF MAILING

I, John Milton Hutchins, a member of the Bar of this Court, herewith certify that the within MOTION TO DISMISS OR TO AFFIRM has been deposited in the United States mails, first-class postage prepaid, addressed to Alexander L. Stevas, Clerk of the Court, Supreme Court of the United States, Washington, D.C., 10593 and that to my knowledge the mailing took place on December 14th, 1983.

John Milton Hutchins

STATE OF COLORADO)
) ss.
COUNTY OF DENVER)

Subscribed and sworn to before me this 14th day of December, 1983.

Kristine J. Hutchins
NOTARY PUBLIC
1525 Sherman
Denver, Colorado

My Commission expires:

My Commission Expires June 4, 1987

CERTIFICATE OF SERVICE

This is to certify that I have duly served the within MOTION TO DISMISS OR TO AFFIRM upon all parties herein by depositing copies of same in the United States mail, postage prepaid, at Denver, Colorado this 14th day of December 1983, addressed as follows:

Richard Velasquez
Montrose, Colorado
P. O. Box 700, Unit 4
Canon City, Colorado 81212



